

Securities and Exchange Commission

§ 240.3b-13

(b) The term *limited partnership roll-up transaction* does not include a transaction involving only entities registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) or any Business Development Company as defined in section 2(a)(48) of that Act (15 U.S.C. 80a-2(a)(48)).

(c) The term *regularly traded* shall be defined as in Item 901(c)(2)(v)(C) of Regulation S-K (§ 229.901(c)(2)(v)(C) of this chapter).

[59 FR 63684, Dec. 8, 1994]

§ 240.3b-12 Definition of OTC derivatives dealer.

The term *OTC derivatives dealer* means any dealer that is affiliated with a registered broker or dealer (other than an OTC derivatives dealer), and whose securities activities:

(a) Are limited to:

(1) Engaging in dealer activities in eligible OTC derivative instruments that are securities;

(2) Issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;

(3) Engaging in cash management securities activities;

(4) Engaging in ancillary portfolio management securities activities; and

(5) Engaging in such other securities activities that the Commission designates by order pursuant to § 240.15a-1(b)(1); and

(b) Consist primarily of the activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section; and

(c) Do not consist of any other securities activities, including engaging in any transaction in any security that is not an eligible OTC derivative instrument, except as permitted under paragraphs (a)(3), (a)(4), and (a)(5) of this section.

(d) For purposes of this section, the term *hybrid security* means a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest or other rates, commodities, securities, indices, quantitative measures, or other financial or economic interests or property of any kind, or any payment or delivery that is dependent on the occurrence or nonoccurrence of any

event associated with a potential financial, economic, or commercial consequence (or any combination, permutation, or derivative of such contract or underlying interest).

[63 FR 59394, Nov. 3, 1998]

§ 240.3b-13 Definition of eligible OTC derivative instrument.

(a) Except as otherwise provided in paragraph (b) of this section, the term *eligible OTC derivative instrument* means any contract, agreement, or transaction that:

(1) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, one or more commodities, securities, currencies, interest or other rates, indices, quantitative measures, or other financial or economic interests or property of any kind; or

(2) Involves any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence; or

(3) Involves any combination or permutation of any contract, agreement, or transaction or underlying interest, property, or event described in paragraphs (a)(1) or (a)(2) of this section.

(b) The term *eligible OTC derivative instrument* does not include any contract, agreement, or transaction that:

(1) Provides for the purchase or sale of a security, on a firm basis, unless:

(i) The settlement date for such purchase or sale occurs at least one year following the trade date or, in the case of an eligible forward contract, at least four months following the trade date; or

(ii) The material economic features of the contract, agreement, or transaction consist primarily of features of a type described in paragraph (a) of this section other than the provision for the purchase or sale of a security on a firm basis; or

(2) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, any security (or group or index of securities), and is:

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(i) Listed on, or traded on or through, a national securities exchange or registered national securities association, or facility or market thereof; or

(ii) Except as otherwise determined by the Commission by order pursuant to § 240.15a-1(b)(2), one of a class of fungible instruments that are standardized as to their material economic terms.

(c) The Commission may issue an order pursuant to § 240.15a-1(b)(3) clarifying whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument.

(d) For purposes of this section, the term *eligible forward contract* means a forward contract that provides for the purchase or sale of a security other than a government security, provided that, if such contract provides for the purchase or sale of margin stock (as defined in Regulation U of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR Part 221), such contract either:

(1) Provides for the purchase or sale of such stock by the issuer thereof (or an affiliate that is not a bank or a broker or dealer); or

(2) Provides for the transfer of transaction collateral in an amount that would satisfy the requirements, if any, that would be applicable assuming the OTC derivatives dealer party to such transaction were not eligible for the exemption from Regulation T of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR part 220, set forth in § 240.36a1-1.

[63 FR 59395, Nov. 3, 1998]

§ 240.3b-14 Definition of cash management securities activities.

The term *cash management securities activities* means securities activities that are limited to transactions involving:

(a) Any taking possession of, and any subsequent sale or disposition of, collateral provided by a counterparty, or any acquisition of, and any subsequent sale or disposition of, collateral to be provided to a counterparty, in connection with any securities activities of the dealer permitted under § 240.15a-1 or any non-securities activities of the dealer that involve eligible OTC deriva-

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tive instruments or other financial instruments;

(b) Cash management, in connection with any securities activities of the dealer permitted under § 240.15a-1 or any non-securities activities of the dealer that involve eligible OTC derivative instruments or other financial instruments; or

(c) Financing of positions of the dealer acquired in connection with any securities activities of the dealer permitted under § 240.15a-1 or any non-securities activities that involve eligible OTC derivative instruments or other financial instruments.

[63 FR 59395, Nov. 3, 1998]

§ 240.3b-15 Definition of ancillary portfolio management securities activities.

(a) The term *ancillary portfolio management securities activities* means securities activities that:

(1) Are limited to transactions in connection with:

(i) Dealer activities in eligible OTC derivative instruments;

(ii) The issuance of securities by the dealer; or

(iii) Such other securities activities that the Commission designates by order pursuant to § 240.15a-1(b)(1); and

(2) Are conducted for the purpose of reducing the market or credit risk of the dealer or consist of incidental trading activities for portfolio management purposes; and

(3) Are limited to risk exposures within the market, credit, leverage, and liquidity risk parameters set forth in:

(i) The trading authorizations granted to the associated person (or to the supervisor of such associated person) who executes a particular transaction for, or on behalf of, the dealer; and

(ii) The written guidelines approved by the governing body of the dealer and included in the internal risk management control system for the dealer pursuant to § 240.15c3-4; and

(4) Are conducted solely by one or more associated persons of the dealer who perform substantial duties for, or on behalf of, the dealer in connection with its dealer activities in eligible OTC derivative instruments.